STATE OF MICHIGAN

COURT OF APPEALS

In re BHAYANA, Minor.

UNPUBLISHED
November 25, 2014

Nos. 320071; 320134
Kent Circuit Court
Family Division
LC No. 13-052647-NA

Before: FITZGERALD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 320071, respondent-father appeals as of right the trial court's initial dispositional order, contesting the trial court's assumption of jurisdiction over the minor child under MCL 712A.2(b)(2) (parental home unfit for the child). In Docket No. 320134, respondent-mother appeals as of right the initial dispositional order, contesting the trial court's assumption of jurisdiction over the minor child under MCL 712A.2(b)(2). We consolidated respondents' respective appeals.[1] We now affirm in Docket Nos. 320071 and 320134.[2]

Both respondents argue that the preponderance of the evidence did not support the trial court's exercise of jurisdiction over the child. We disagree. "To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2." *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We defer to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011); MCR 2.613(C); MCR 3.902(A). Here, following an adjudication trial, the trial court took jurisdiction over the child on the basis of MCL 712A.2(b)(2), which provides that a trial court

[1] *In re Bhayana*, unpublished order of the Court of Appeals, entered February 19, 2014 (Docket Nos. 320071, 320134)

[2] Although the trial court has since discharged this case, we will address the merits of the adjudication because of the potential collateral consequences.

has jurisdiction in proceedings concerning a minor child "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . . is an unfit place for the juvenile to live in."

The evidence presented at the adjudication trial supported the trial court's exercise of jurisdiction over the child under MCL 712A.2(b)(2) in Docket Nos. 320071 and 320134. Respondents were married to each other and lived together with the young minor child. The record established that respondent-mother engaged in criminal and drunken behavior on July 5, 2013, when she kicked respondent-father while he was holding the child. The police responded to respondent-father's report of domestic assault and observed that respondent-mother was "extremely intoxicated," "verbally aggressive," and "very belligerent." Respondent-mother became "extremely upset" and started breaking windows in the family home with her bare hands. One of the responding officers testified that the child could hear respondent-mother screaming during the police's response to the July 5, 2013, incident. At the adjudication trial, respondent-mother testified that she was "disgustingly" intoxicated on July 5, 2013. The record supported that July 5, 2013, was not the first instance in which mother abused substances. Cassandra Duursma, a Child Protective Services (CPS) investigator, testified that respondent-mother reported a history of substance dependency and marijuana use; and respondent-mother testified that on July 1, 2013, she consumed alcohol and smoked marijuana twice while the child was in her custody. The record also established that the July 5, 2013, incident was not the only incident of criminality in this case. A no-contact order was put in place as a result of the July 5, 2013, incident and respondent-mother's corresponding arrest for domestic assault. The no-contact order prohibited respondent-mother from having contact with respondent-father or the family home. The record supported that respondent-father allowed respondent-mother to return to the family home despite respondents' shared knowledge that this violated the no-contact order. On August 20, 2013, respondent-mother was arrested and incarcerated for violating the no-contact order.

The preponderance of the evidence presented at the adjudication trial also supported that the child's home or environment was unfit because of neglect in the form of a home that was in an unfit and unsafe condition for the child. MCL 712A.2(b)(2). The responding officer testified that on July 5, 2013, he observed that "it was extremely deplorable and filthy inside" respondents' house. According to the officer, there were clothes and trash scattered about, there was a "strong odor" of feces and urine, there were stains on the carpet and glass and excrement on the living room floor, and there was rotting food and flies in the kitchen. The officer testified that the child could easily come in contact with the glass and feces that were on the living room floor. The officer also testified that he had a good view of respondents' backyard and observed that it was "extremely disordered" and "was full of pig feces." Moreover, the testimonies of Duursma and fellow CPS worker, Carrie Rhine-Kilel, indicated that respondents' yard remained unsafe for the child until the child's August 27, 2013, removal. At the adjudication trial, Duursma testified that respondents' yard was unsafe during her August 20, 2013, and August 27, 2013, visits to the home; and Rhine-Kilel testified that the yard was unsafe during her August 22, 2013, visit. Duursma and Rhine-Kilel each testified that they observed shards of broken glass, glass bottles, chemical containers, and other items of trash in respondents' yard that were accessible to the child. The trial court admitted photographs of the yard taken on August 20, 2013, which the trial court found supported that the outside of the home "was deplorable" and that the child could access the dangerous conditions in the yard.

We defer to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App at 33. On the record before us, we do not find that the trial court clearly erred when finding by a preponderance of the evidence that the child's "home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent" was an unfit place for the child to live. MCL 712A.2(b)(2); *In re HRC*, 286 Mich App at 450. In light of the evidence of the child's exposure to domestic violence and drunkenness and the persistent inappropriate conditions of the child's home, the trial court's finding that the child's home was unfit under MCL 712A.2(b)(2) does not leave us "with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459.

Respondent-mother separately argues in Docket No. 320134 that the trial court relied on inadmissible hearsay evidence in finding that it had jurisdiction over the child under MCL 712A.2(b). Respondent-mother appears to contend that the trial court impermissibly relied on police reports, as well as CPS investigative reports that alluded to anonymous referral sources and "collateral contacts." This argument is unpersuasive, given that the parties did not offer any police report or CPS report into evidence during the adjudication trial, and the record does not indicate that the trial court relied on any such reports in reaching its jurisdiction determination.

Respondent-mother's statement of the questions presented in Docket No. 320134 also asserts that "[t]he trial court erred by assuming jurisdiction over the minor child under a section of the petition (paragraph "C)" [sic] that the trial court struck from the petition in its entirety in its ruling after the adjudication hearing." However, respondent-mother does not address this assertion in the discussion section of her brief on appeal and, thus, abandoned the issue. *Walgreen Co v Macomb Twp*, 280 Mich App 58, 67 n 3; 760 NW2d 594 (2008). Moreover, this assertion is meritless given that the trial court specifically found that paragraph C was not proven by a preponderance of the evidence.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Douglas B. Shapiro